
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Water Rights Fees for Fiscal Year 2018-2019

Amendments to Division 3 of Title 23 of the California Code of Regulations

Required Notice of Proposed Emergency Action

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency must provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. This document provides the required notice. Upon receiving the proposed emergency regulation, OAL shall publish the notice on their website and allow interested persons five calendar days to submit comments on the proposed emergency regulation as set forth in Government Code section 11349.6.

Proposed Emergency Action

Effective January 1, 2004, the Water Code was amended to require the State Water Resources Control Board (State Water Board or Board) to adopt emergency regulations revising and establishing fees to be deposited in the Water Rights Fund in the State Treasury (Wat. Code, §§ 1525, 1530, 1551). The Water Code requires the State Water Board to review and revise the fee schedule each fiscal year as necessary to conform to the amounts appropriated by the Legislature for expenditure, from the Water Rights Fund for support of water rights program activities.

On September 20, 2018, the State Water Board adopted an emergency regulation amending water rights fee schedules in title 23, division 3, chapter 5, sections 1062, 1063, 1064, 1066, and 1068 of the California Code of Regulations. In general, the emergency regulation will (1) increase base and annual water right fees to conform to amounts appropriated by the Legislature from the Water Rights Fund, (2) adjust the caps on application and petition filing fees based on the consumer price index, (3) adjust the fees for temporary permits for diversions to underground storage from high-flow events, (4) adjust fees for small domestic and livestock stockpond use registrations, including adding an annual fee and providing for fee reductions and caps for small domestic use and livestock stockpond use, respectively, under certain circumstances, and (5) increase the annual and renewal fees on small irrigation use registration for AB 2121 area/non-cannabis commercial crops.

Proposed Text of Emergency Regulation

See the attached proposed text of the emergency regulation.

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Finding of Emergency (Gov. Code, § 11346.1, subd. (b))

The State Water Board has a mandatory legal duty to assess fees and to adopt the schedule of fees by emergency regulation (Wat. Code, §§ 1525, 1530). Water Code section 1530, subdivision (b) states that “[t]he adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.” Notwithstanding chapter 3.5 (commencing with section 11340) of part 1 of division 3 the Government Code, the emergency regulation shall remain in effect until revised by the State Water Board (Wat. Code, § 1530).

Moreover, the State Water Board finds that the proposed amendments to the Board’s fee regulations must be adopted immediately in order to allow for the timely collection of fees to conform to amounts appropriated by the Legislature from the Water Rights Fund for the support of water right program activities. Without fee revenue in the amounts appropriated, much of the water rights program would be in danger of being shut down. Continued administration of the water rights program is essential to the economy and environment of the State of California. Without funding for the program, critical water transfers and changes in water project operations would not be approved, the security of water rights needed for the state’s water supply projects would be undermined, and the environment would be threatened. New water supply projects for irrigation or municipal use, and modification of existing projects involving changes in permitted or licensed water rights, could not move forward. The water rights program also is important for the protection of public health. For example, the water rights program applies and enforces Bay-Delta water quality standards that protect the drinking water supplies for 22 million Californians. In sum, adoption of the proposed regulation is necessary for the immediate preservation of the public health and welfare.

The State Water Board is unable to address the situation through non-emergency regulations because, as discussed above, it has a mandatory legal duty to adopt the fee schedules by emergency regulation.

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))

Water Code sections 1058 and 1530 provide authority for the emergency regulation. The emergency regulation implements, interprets, or makes specific Water Code sections 386, 1228.3, 1228.5, 1425, 1426, 1525, 1535, 1536, 1537, 1551, and 1552.

Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))

Under the Water Code and existing regulations, a person filing a water right application, petition, registration, groundwater recordation or other filing, must pay a filing fee to the State Water Board. Existing regulations also establish annual fees for water rights permits, licenses, water leases, and applications. In addition, the existing regulations establish requirements for filing a petition for reconsideration of a fee determination made by the State Water Board. The water rights fee regulations are contained in division 3 of title 23 of the California Code of Regulations. An overview of the objectives and benefits of the regulations is provided above, under “Finding of Emergency.”

The proposed emergency regulation would adjust the fee schedule in FY 2018-19 to:

(1) increase annual water right fees to conform to amounts appropriated by the Legislature from the Water Rights Fund, (2) adjust the caps on application and petition filing fees based on the consumer price index, (3) adjust the fees for temporary permits for diversions to underground storage from high-flow events, (4) adjust fees for small domestic and livestock stockpond uses, including adding an annual fee and providing for fee reductions and caps for small domestic use and livestock stockpond use, respectively, under certain circumstances, and (5) increase the annual and renewal fees on small irrigation use registration for AB 2121 area/non-cannabis commercial crops.

There is no comparable federal statute or regulation. The proposed regulation is not inconsistent or incompatible with existing state regulations.

Other Matters Prescribed by Statute (Gov. Code, § 11346.5, subd. (a)(4))

No other matters are prescribed by statute or regulation applicable to the State Water Board's water right fees.

Local Mandate (Gov. Code, § 11346.5, subd. (a)(5))

The proposed emergency regulation does not impose a mandate on local agencies or school districts because it does not mandate a new program or a higher level of service of an existing program. The fee schedule applies equally to public and private entities, and is not unique to local government. No state reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

Estimate of Cost or Savings (Gov. Code, § 11346.5, subd. (a)(6))

Under the proposed emergency regulation's increase in annual permit and license fees, most local and state agencies will pay more in annual fees than last year. The California Department of Water Resources holds water rights for projects associated with the State Water Project for which the increased cost will be approximately \$76,020 for FY 2018-19. However, it is assumed the Department of Water Resources will pass its fees through to the State Water Project contractors; therefore, any increase in costs will not be borne by the State. All other state agencies with water rights will only incur increased costs for FY 2018-19 of less than \$200 per water right and should be able to absorb these costs within their existing budgets. Furthermore, other state and local agencies may also pass their costs to their contractors or constituents.

Under the proposed emergency regulations, there will be an increase in the caps for application and petition filing fees. As a result, local and state agencies may be subject to increased costs. However, it is impossible to predict what filings the State Water Board will receive, though it can be assumed that state and local agencies are unlikely to submit new water right applications or petitions for amounts exceeding the current filing fee cap. If a state or local agency were to be subject to fees greater than the current filing fee cap, they typically will pass along all water right fees to the contractors or otherwise recover such costs. Therefore, it is unlikely that any state or local agencies will see increased costs due to the increase in caps on the application and petition filing fees.

There is no cost to any local agency or school district for which reimbursement is required.

There is no cost or savings in federal funding to the state.

October 10, 2018

Date



Jeanine Townsend
Clerk to the Board

§ 1062. Filing Fees for Water Right Applications.

- (a) A person who files a water right application shall pay to the board a filing fee as follows:
- (1)(A) Except as provided in subparagraphs (B) and (C), the fee for a water right application shall be \$1,000, plus \$15 for each acre-foot that the applicant seeks to divert in excess of 10 acre-feet. The total fee shall not exceed ~~\$548,899~~534,155, plus any additional fee due pursuant to subparagraphs (2) and (3).
 - (B) At a facility where a small hydroelectric generating facility meets the criteria for a Class 28 categorical exemption under the California Environmental Quality Act, as established in California Code of Regulations, title 14, section 15328, the fee shall be \$1,000.
 - (C) The fee for an application for a temporary permit filed under Water Code section 1425, other than a permit described in subparagraph (D) or (E) of this subdivision, shall be the greater of either (i) 50 percent of the fee calculated under subparagraph (A), above, or (ii) \$2,000.
 - (D) The fee for an application for a temporary permit under Water Code section 1425 for a small hydroelectric generating facility that meets the criteria for a Class 28 categorical exemption under the California Environmental Quality Act, as established in California Code of Regulations, title 14, section 15328, shall be \$1,000. The filing fee includes the annual permit fee if a temporary permit is issued.
 - (E) The fee for an application for a temporary permit, ~~or renewal of a temporary permit,~~ filed under Water Code section 1425 that is solely for purposes of diverting water from high flow events to underground storage for later beneficial use shall be the lesser of either (i) the fee calculated pursuant to subparagraph (C), above, or (ii) \$4005,000 plus \$1,000.10 for every 100 acre-footacre-foot of water the applicant diverts to underground storage under the permit in excess of 10,000 acre-feetapplied for. For renewal of a temporary permit issued pursuant to this subparagraph, where the renewal proposes an identical project and is filed within one year of issuance of the prior temporary permit, the fee for renewal of a temporary permit shall be \$1,500 plus \$0.20 per acre-foot of water actually diverted under the renewed temporary permit. The portion of the application fee based on the amount diverted shall be due within 30 days of actual diversion, and shall be accompanied by a report of the amount actually diverted.
 - (2) If a water right application is accompanied by a petition to revise a declaration of fully appropriated stream systems, then \$10,000 shall be added to the fee.
 - (3) If a water right application is accompanied by a petition for assignment of a state-filed application pursuant to Water Code section 10504, then \$5,000 shall be added to the fee.
- (b) A person who filed a water right application on or after July 1, 2003, and prior to January 1, 2004, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to the regulation in effect on January 1, 2004.
- (c) The application filing fee includes a non-refundable \$250 initial review fee.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1425, 1426, 1525 and 1535, Water Code.

23 CCR § 1063
§ 1063. Annual Fees for Water Right Applications.

Under any of the following circumstances, a water right applicant shall pay an annual fee, ~~as set forth in section 1066 of \$750 plus 0.073 for each acre-foot in excess of 10 acre-feet, calculated as described in section 1066, subdivision (b).~~

- (a) The diversion of water, the construction of diversion works, or the clearing of land where the diverted water will be used or stored, has been initiated before a permit is issued authorizing the diversion.
- (b) The applicant requests the board to delay processing the water right application.
- (c) The applicant is a lead agency under the California Environmental Quality Act (CEQA) (commencing with Public Resources Code section 21000) and has not adopted or certified a final environmental document for the project for which the application is filed, as may be required under CEQA, within two years after the board first provides notice of the water right application.
- (d) The applicant fails to provide supplemental information requested pursuant to Water Code section 1275 within the time period provided.
- (e) ~~The Chief, Division of~~ Deputy Director for Water Rights, has determined that a permit may be issued for the project, but the applicant has not paid filing fees required under Public Resources Code section 10005, Fish and Game Code section 711.4, or other law.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1525, 1536 and 1537, Water Code.

§ 1064. Filing Fees for Petitions or Requests.

(a) A person who files a petition or a request for release from priority shall pay to the board a filing fee for each water right application, permit or license covered by the petition or request in accordance with this section.

(1) For purposes of calculating the filing fee, a petition to change one or more terms of a single application, permit, license, or other water right shall be considered a single petition, provided that action can be taken on the changes simultaneously, except that a petition for an extension of time shall be considered a separate petition, subject to a separate fee, from a petition to change one or more other terms in a water right. A petitioner requesting changes to more than one application, permit, license, or other water right shall file a separate petition or petitions for each water right and a filing fee shall be required for each petition. A separate filing fee shall be required for each change petition subsequently filed on a water right that is already the subject of a pending petition for change.

(A) Except as provided in subparagraphs (i), (ii), (iii) and (iv), the fee for a petition to change the terms of an application, permit or license shall be as follows. The fee shall be a minimum of \$1,000. If the total annual amount of diversion sought by the pending application or authorized by the permit or license, as calculated in accordance with section 1066, is greater than 10 acre-feet, then the petitioner shall pay an additional \$0.30 for each acre-foot in excess of 10 acre-feet. The total fee shall not exceed ~~\$65186,710.~~

(i) The fee for a petition for change pursuant only to Water Code section 1707 shall be \$850.

(ii) The fee for a change petition involving a transfer of water pursuant to Water Code section 382, 1435, 1701, 1725, or 1735 shall be \$2,000, plus \$0.30 for each acre-foot that the petitioner seeks to transfer in excess of 10 acre-feet. The fee shall be based on the maximum amount of water proposed to be transferred annually, not the amount of water proposed to be transferred over the entire term of the transfer. The total fee shall not exceed ~~\$518,899~~534,155.

(iii) The fee for a petition for extension of time shall be \$1,000.

(iv) The fee for a petition for issuance of separate permits or licenses pursuant to section 836, where there are no changes to the authorized point of diversion, place of use, purpose of use, or any other material term of the permit or license other than as necessary for the split, shall be \$850.

(2) The fee for a petition to change the point of discharge, place of use, or purpose of use of treated wastewater pursuant to Water Code section 1211 shall be \$1,000.

(3) The fee for a request for release from priority of a state-filed application pursuant to Water Code section 10504 shall be \$5,000.

(4) The fee for a petition filed pursuant to Water Code section 1228.7 to change the point of diversion or place of use under a registration of an appropriation for small domestic or livestock stock pond use shall be \$500.

(5) The fee for a petition filed pursuant to Water Code section 1228.7 to change the point of diversion or place of use under a registration of an appropriation for small irrigation use shall be \$750.

(b) A person who filed a petition or a request for release from priority on or after July 1, 2003, and prior to January 1, 2004, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to the regulation in effect on January 1, 2004.

(c) The petition filing fee includes a non-refundable \$250 initial review fee.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 386, 1228.7, 1525 and 1535, Water Code.

§ 1066. Annual Fees for Permits or Licenses.

(a) A person who holds a water right permit or license shall pay a minimum annual fee of ~~\$150~~225. If the total annual amount of diversion authorized by the permit or license is greater than 10 acre-feet, then the permittee or licensee shall pay an additional ~~\$0.0690~~0.073 for each acre-foot in excess of 10 acre-feet.

(1) For permits or licenses issued prior to the beginning of the year for which the fee is imposed, the board shall calculate annual fees according to the total annual amount of diversion authorized by the permit or license as of the beginning of the year.

(2) The board shall calculate annual fees for permits issued on or after the beginning of the year according to the total annual amount of diversion authorized by the permit as issued by the board.

(b) The board shall calculate the annual fee based on the total annual amount of diversion authorized by the permit or license, without regard to the availability of water for diversion or any bypass requirements or other conditions or constraints that may have the practical effect of limiting diversions but do not constitute a condition of the permit or license that expressly sets a maximum amount of diversion.

(1) If the permit or license does not expressly identify the total annual amount of diversion, the board shall calculate the total annual amount based on the rate of authorized diversion multiplied by the length of time in the authorized season of diversion.

(2) If the permit or license contains an annual diversion limitation that is applicable only to that permit or license, and the limitation is less than the calculated diversion volume, the fee shall be based on the amount specified in the limitation.

(3) If a person holds multiple water rights that contain an annual diversion limitation that is applicable to the combination of those rights, but the person may still divert the full amount authorized under a particular right, then the fee shall be based on the total annual amount for that individual right.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1525, 1536 and 1537, Water Code.

§ 1068. ~~Registration Fees for Small Domestic, Livestock Stockpond and~~
Small Irrigation Uses Registrations.

- (a) A person who registers an appropriation of water for small domestic, or livestock stockpond ~~or small irrigation, other than irrigation use for cannabis,~~ use pursuant to Water Code section 1228.3 shall pay to the board a non-refundable registration fee of \$250.
- (b) ~~A person who renews such~~ Each holder of a registration, other than for irrigation use for cannabis, for small domestic or livestock stockpond use issued pursuant to Water Code section 1228.5 shall pay to the board an annual renewal fee in each year after the registration was first registered of \$100, as follows:
 - (1) In fiscal year 2018-19, \$50.
 - (2) In fiscal year 2019-20, \$75.
 - (3) In fiscal year 2020-21, \$100.
 - (4) For a small domestic use registration held by a low-income resident for purposes of providing water for human consumption, cooking and sanitary purposes, the annual fee shall be reduced by 20 percent.
 - (5) For purposes of this section, a low-income resident is: (A) someone whose household income is 200 percent or less of federal poverty level; or (B) someone who is enrolled in a qualified public assistance program.
 - (6) Any holder of a small domestic use registration who submits adequate substantiation of eligibility for the annual fee reduction pursuant to paragraph (4), above, during fiscal year 2018-19 shall receive a credit on their fiscal year 2019-20 bill in the amount of any overpayment.
 - (7) For any holder of a small domestic use registration who submits adequate substantiation of eligibility for the annual fee reduction pursuant to paragraph (4), above, after fiscal year 2018-19, the reduction shall take effect in the subsequent fiscal year.
 - (8) For livestock stockpond use, the maximum annual fee for a single primary owner holding 5 or more registrations shall be as follows:
 - (A) In fiscal year 2018-19, \$250.
 - (B) In fiscal year 2019-20, \$375.
 - (C) In fiscal year 2020-21, \$500.
- (c) A person who registers an appropriation of water for small irrigation use other than for irrigation use for cannabis shall pay to the board a non-refundable registration fee of \$750.
- (d) A person who registers an appropriation of water for small irrigation use other than for irrigation use for cannabis shall pay to the board an annual fee of \$100 in each year after the registration was first registered.
- (e) A person who registers an appropriation of water for small irrigation use pursuant to Water Code section 1228.3, for which cannabis cultivation is an intended use, shall pay to the board a non-refundable annual fee of \$750.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1228.3, 1228.5, and 1525, Water Code